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EXAMINER	
SHELEHEDA, JAMES R	
ART UNIT	**PAPER NUMBER**
2614	

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/752,632	ZUSTAK ET AL.	
	Examiner	Art Unit	
	James Sheleheda	2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 April 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-93* is/are pending in the application.

4a) Of the above claim(s) *52-85 and 90-93* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-51 and 86-89* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of group I, consisting of claims 1-51 and 86-89, in the reply filed on 04/15/05 is acknowledged. The traversal is on the ground(s) that applicant feels that no additional search burden appears to be required and that separate utility does not appear to be well supported by the restriction. This is not found persuasive.

a. It is noted that a burdensome search is not wholly dependent upon separate classification, as applicant appears to indicate. In this case, the groups of inventions have been amended as to require separate *fields of search* due to the divergent subject matters of the amended materials. The examiner finds that the extensive field of search currently required by the divergent subject matter is indeed burdensome.

b. As indicated in the previous Office Action, Group I has utility in an advertisement system requiring a user to make a selection with a set period of time. If a selection is not made, a default advertisement is chosen for the user instead. The separate utility of Group II, as previously indicated, lies in providing a viewer with additional information concerning the lengths of advertisements, thus allowing the selection of a preferred length advertisement.

c. It is noted that a typo existed in line 8 of the previous restriction, as "claims 52-65" should indeed have read as "claims 52-85". Applicant is thanked for pointing this out and for recognizing the error.

d. The examiner has noted applicant's financial considerations, but as indicated by applicant, this argument is not considered in determinations on restriction.

The requirement is still deemed proper and is therefore made FINAL.

Claim Objections

2. Claims 1, 18, and 33 are objected to because of the following informalities:

In claim 1, lines 8 and 9, and claim 18, lines 9 and 10, the second recitation of "prior to expiration of the timer" should be removed.

In claim 33, line 5, the second recitation of "the user" should be removed.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 2, 5, 6, 8-10, 15, 16, 18, 21, 22, 24-26, 31-35, 37, 38, 44 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barton (US2001/0049820) (of record) in view of Zigmond et al. (Zigmond) (6,698,020).

As to claim 1, while Barton discloses a method of advertising (paragraph 26), comprising:

presenting a menu of possible advertisements to a user (paragraph 39 and paragraph 40) to permit the user to select advertisements to view (paragraph 39 and paragraph 40);

instructing the user to select a specified number of advertisements from the menu (presenting a menu for the user to select a single ad; paragraphs 39 and 40);

determining if the user has selected (Fig. 2; user choosing a particular commercial; paragraph 39, lines 8-11) the specified number of advertisements (user selecting a single commercial; paragraph 39, lines 8-11); and

merging the selected specified number of advertisements with stored entertainment content (inserting the advertisement into the paused program stream; paragraph 39) so that both the advertisements (paragraphs 39 and 40) and the stored entertainment content (stored program the user selected; paragraph 29) are presented to the user (wherein the ads are presented during a commercial break in the users selected program; paragraph 30, 39 and 40), he fails to specifically disclose starting a timer upon presenting the menu, instructing the user to select an advertisement prior to expiration of the timer, determining if the user has selected the advertisement prior to expiration of the timer and if the user has not selected the advertisement prior to

expiration of the timer, then selecting on behalf of the user a number of advertisements adequate to total the specified number when added to the advertisements selected by the user.

In an analogous art, Zigmond discloses an advertisement insertion system (Fig. 5) wherein a menu of advertisements is presented to a user (column 16, lines 65-column 17, line 9) and wherein a default advertisement will be selected for the user (column 17, lines 3-6) if the user fails to make a selection after some amount of time (inherently including a timer to initiate a default selection when no user selection is made; column 17, lines 3-6) for the typical benefit of ensuring that an advertisement is still presented to the user even when the user fails to actively select an ad (column 17, lines 4-6).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Barton's system to include starting a timer upon presenting the menu, instructing the user to select an advertisement prior to expiration of the timer, determining if the user has selected the advertisement prior to expiration of the timer and if the user has not selected the advertisement prior to expiration of the timer, then selecting on behalf of the user a number of advertisements adequate to total the specified number when added to the advertisements selected by the user, as taught by Zigmond, for the typical benefit of ensuring that an advertisement is still presented to the user even when the user fails to actively select an ad.

As to claim 2, Barton and Zigmond disclose receiving the selected advertisements from an advertising server (central server; see Barton at paragraph 49).

As to claim 5, Barton and Zigmond disclose wherein merging the advertisements with the stored entertainment content comprises inserting the advertisements at locations of advertisement place holders forming a part of the entertainment content (inserting the ads at set commercial breaks in the program; see Barton at paragraph 39, lines 5-9).

As to claim 6, Barton and Zigmond disclose wherein the selected advertisements are received via a modem (see Barton at paragraph 49).

As to claim 9, Barton and Zigmond disclose wherein the menu is presented without simultaneous entertainment content (wherein the menu is displayed during ad avail time with no program content; see Barton at paragraph 40, lines 1-7).

As to claim 10, Barton and Zigmond disclose wherein the menu is presented within a window appearing simultaneously with entertainment content (wherein the menu overlayed onto the broadcast image; see Barton at paragraph 39).

As to claim 15, Barton and Zigmond disclose caching the selected advertisements in a storage device (storage device, 903; see Barton at paragraph 49) within a set-top box (within a DVR; see Barton at paragraphs 49, 27 and 28).

As to claim 16, Barton and Zigmond disclose caching the selected advertisements in a storage device (storage device, 903; see Barton at paragraph 49) coupled to a set-top box (coupled within a DVR; see Barton at paragraphs 49, 27 and 28).

As to claim 18, while Barton discloses an electronic storage medium (DVR, paragraph 27) containing instructions which, when executed on a programmed processor carry out a process of advertising (paragraph 26), comprising:

presenting a menu of possible advertisements to a user (paragraph 39 and paragraph 40) to permit the user to select advertisements to view (paragraph 39 and paragraph 40);

instructing the user to select a specified number of advertisements from the menu (presenting a menu for the user to select a single ad; paragraphs 39 and 40);

receiving the selected advertisements from an advertising server (central server; paragraph 49); and

determining if the user has selected (Fig. 2; user choosing a particular commercial; paragraph 39, lines 8-11) the specified number of advertisements (user selecting a single commercial; paragraph 39, lines 8-11); and

merging the selected specified number of advertisements with stored entertainment content (inserting the advertisement into the paused program stream; paragraph 39) so that both the advertisements (paragraphs 39 and 40) and the stored entertainment content (stored program the user selected; paragraph 29) are presented to the user (wherein the ads are presented during a commercial break in the users selected program; paragraph 30, 39 and 40), he fails to specifically disclose starting a timer upon presenting the menu, instructing the user to select an advertisement prior to expiration of the timer, determining if the user has selected the advertisement prior to expiration of the timer and if the user has not selected the advertisement prior to expiration of the timer, then selecting on behalf of the user a number of advertisements adequate to total the specified number when added to the advertisements selected by the user.

In an analogous art, Zigmond discloses an advertisement insertion system (Fig. 5) wherein a menu of advertisements is presented to a user (column 16, lines 65-column 17, line 9) and wherein a default advertisement will be selected for the user (column 17, lines 3-6) if the user fails to make a selection after some amount of time (inherently including a timer to initiate a default selection when no user selection is made; column 17, lines 3-6) for the typical benefit of ensuring that an advertisement is still presented to the user even when the user fails to actively select an ad (column 17, lines 4-6).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Barton's system to include starting a timer upon

presenting the menu, instructing the user to select an advertisement prior to expiration of the timer, determining if the user has selected the advertisement prior to expiration of the timer and if the user has not selected the advertisement prior to expiration of the timer, then selecting on behalf of the user a number of advertisements adequate to total the specified number when added to the advertisements selected by the user, as taught by Zigmond, for the typical benefit of ensuring that an advertisement is still presented to the user even when the user fails to actively select an ad.

As to claim 21, Barton and Zigmond disclose wherein merging the advertisements with the stored entertainment content comprises inserting the advertisements at locations of advertisement place holders forming a part of the entertainment content (inserting the ads at set commercial breaks in the program; receiving the selected advertisement from an advertising server (central server; see Barton at paragraph 49 and paragraph 39, lines 5-9).

As to claim 22, Barton and Zigmond disclose wherein the selected advertisements are received via a modem (see Barton at paragraph 49).

As to claim 25, Barton and Zigmond disclose wherein the menu is presented without simultaneous entertainment content (wherein the menu is displayed during ad avail time with no program content; see Barton at paragraph 40, lines 1-7).

As to claim 26, Barton and Zigmond disclose wherein the menu is presented within a window appearing simultaneously with entertainment content (wherein the menu overlayed onto the broadcast image; see Barton at paragraph 39).

As to claim 31, Barton and Zigmond disclose caching the selected advertisements in a storage device (storage device, 903; see Barton at paragraph 49) within a set-top box (within a DVR; see Barton at paragraphs 49, 27 and 28).

As to claim 32, Barton and Zigmond disclose caching the selected advertisements in a storage device (storage device, 903; see Barton at paragraph 49) coupled to a set-top box (coupled within a DVR; see Barton at paragraphs 49, 27 and 28).

As to claim 33, while Barton discloses a set top box (DVR), comprising:

a programmed processor (inherent to the DVR device of Fig. 1) that presents a user with a menu of advertisements (paragraph 39 and paragraph 40);

means for receiving a user selection (Fig. 2; user remote control, 301) of one or more advertisements from the menu of advertisements (paragraph 39, lines 8-11);

advertisement receiving means (a modem) for receiving the selected advertisement from a service provider (paragraph 49);

content receiving means (input section, 101) for receiving entertainment content from the service provider (paragraph 27); and

the programmed processor merging the entertainment content with the advertisements (inserting the advertisement into the paused program stream; paragraph 39) for presentation to the user (wherein the ads are presented during a commercial break in the users selected program; paragraph 30, 39 and 40), he fails to specifically disclose a timer that establishes a time period during which the user can select advertisements from the menu, wherein if the user fails to select a specified number of advertisements within the timer period, advertisements are selected for the user.

In an analogous art, Zigmond discloses an advertisement insertion system (Fig. 5) wherein a menu of advertisements is presented to a user (column 16, lines 65-column 17, line 9) and wherein a default advertisement will be selected for the user (column 17, lines 3-6) if the user fails to make a selection after a certain amount of time (inherently including a timer to initiate a default selection when no user selection is made; column 17, lines 3-6) for the typical benefit of ensuring that an advertisement is still presented to the user even when the user fails to actively select an ad (column 17, lines 4-6).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Barton's system to include a timer that establishes a time period during which the user can select advertisements from the menu, wherein if the user fails to select a specified number of advertisements within the timer period, advertisements are selected for the user, as taught by Zigmond, for the typical benefit of ensuring that an advertisement is still presented to the user even when the user fails to actively select an ad.

As to claim 34, Barton and Zigmond disclose a storage device (storage device, 903; see Barton at paragraph 49) forming a part of the set top box (within the DVR; see Barton at paragraphs 49, 27 and 28) to store the selected advertisements (see Barton at paragraph 49).

As to claim 35, Barton and Zigmond disclose a storage device (storage device, 903; see Barton at paragraph 49) coupled to the set top box (coupled within the DVR; see Barton at paragraphs 49, 27 and 28) to store the selected advertisements (see Barton at paragraph 49).

As to claim 37, Barton and Zigmond disclose wherein the advertisement receiving means comprises a modem (see Barton at paragraph 49).

As to claim 38, Barton and Zigmond disclose wherein the means for receiving a user selection comprises an interface to a remote control device (wherein user selections to the DVR are made with a remote control; see Barton at Fig. 2; paragraph 28, lines 4-6 and paragraph 30, lines 1-5).

As to claim 42, Barton and Zigmond further disclose a modem (see Barton at paragraph 49) and wherein the selected advertisements are received via the modem (see Barton at paragraph 49).

As to claim 45, Barton and Zigmond disclose wherein the programmed processor presents the menu without simultaneous entertainment content (wherein the menu is displayed during ad avail time with no program content; see Barton at paragraph 40, lines 1-7).

As to claim 46, Barton and Zigmond disclose wherein the programmed processor presents the menu within a window appearing simultaneously with entertainment content (wherein the ad menu is overlayed onto the broadcast image; see Barton at paragraph 39).

As to claim 48, Barton and Zigmond disclose wherein the menu is presented without simultaneous entertainment content (wherein the menu is displayed during ad avail time with no program content; see Barton at paragraph 40, lines 1-7).

As to claim 49, Barton and Zigmond disclose wherein the menu is presented within a window appearing simultaneously with entertainment content (wherein the menu overlayed onto the broadcast image; see Barton at paragraph 39).

As to claims 8, 24, 44 and 47, while Barton and Zigmond disclose a menu (see Barton at paragraph 39 and paragraph 40), they fail to specifically disclose a scrolling banner appearing simultaneously with entertainment content.

The examiner takes official notice that it is notoriously well known to utilize a scrolling banner which appears simultaneously with entertainment content, wherein the banner will scroll to provide more information then could be displayed at once in the banner, for the typical benefit of providing a more efficient use of the display area by utilizing a smaller portion of the display to provide additional information to a user.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Barton and Zigmond's system to include a scrolling banner appearing simultaneously with entertainment content for the typical benefit of more efficiently utilizing a display by providing a means utilize a smaller portion of the display area to provide additional information to a user.

5. Claims 86-88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ngo et al. (Ngo) (6,574,793) (of record) in view of Zigmond.

As to claim 86, while Ngo discloses an advertising method, comprising;

presenting a television viewer with a menu of advertisements (different car ads; Fig. 9; column 6, lines 44-54 and column 5, lines 29-36) from which to select an advertisement for viewing (column 6, lines 44-54);

prompting the user to select a specified number of advertisements from the menu (prompting the user to select one of multiple different car ads; Fig. 9; column 6, lines 44-54 and column 5, lines 29-36);

receiving a selection of advertisements from the television viewer (column 6, lines 47-54); and

presenting the television viewer with the entertainment contain and the selected advertisements (column 6, lines 44-50 and column 3, lines 25-42), he fails to specifically disclose prompting viewer selection from the menu within a specified time period and receiving a selection with the specified time period.

In an analogous art, Zigmond discloses an advertisement insertion system (Fig. 5) wherein a menu of advertisements is presented to a user (column 16, lines 65-column 17, line 9) and wherein a default advertisement will be selected for the user (column 17, lines 3-6) if the user fails to make a selection after some amount of time (inherently including a timer to initiate a default selection when no user selection is made; column 17, lines 3-6) for the typical benefit of ensuring that an advertisement is still presented to the user even when the user fails to actively select an ad (column 17, lines 4-6).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Ngo's system to include starting a timer upon presenting the menu, instructing the user to select an advertisement prior to expiration of the timer, determining if the user has selected the advertisement prior to expiration of the timer and if the user has not selected the advertisement prior to expiration of the timer, then selecting on behalf of the user a number of advertisements adequate to total the specified number when added to the advertisements selected by the user, as taught by Zigmond, for the typical benefit of ensuring that an advertisement is still presented to the user even when the user fails to actively select an ad.

As to claim 87, Ngo and Zigmond further disclose:

presenting the television viewer with a menu (see Ngo at column 6, lines 44-54) of advertisement types (see Ngo at column 5, lines 15-17 and lines 29-39);

receiving an advertisement type selection from the television viewer (see Ngo at column 6, lines 47-54 and column 5, lines 36-39); and

presenting the television viewer with the selected advertisement (the particular car ad; see Ngo at column 5, lines 29-36) according to the selected advertisement type (according to a particular color desired by the viewer; see Ngo at column 5, lines 36-39).

As to claim 88, while Ngo and Zigmond disclose presenting an advertisement when the advertisement is selected by viewers, they fail to specifically disclose charging an advertiser based upon the number of times the advertisement is selected by a group of television viewers.

The examiner takes official notice that it is notoriously well known in the art to charge an advertiser based upon the number of times the advertisement is presented to viewers, which is determined by the number of times the advertisement is selected by the group of television viewers, for the typical benefit of ensuring that advertisers are charged for each presentation of their advertisement to viewers.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Ngo and Zigmond's system to include charging an advertiser based upon the number of times the advertisement is selected by a group of

television viewers for the typical benefit of ensuring that advertisers are charged for each instance their advertisement is provided to viewers.

6. Claims 86, 87 and 89 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hooks et al. (Hooks) (6,169,542) (of record) in view of Zigmond.

As to claim 86, while Hooks discloses an advertising method, comprising;

presenting a television viewer with a menu of advertisements (Fig. 8; column 10, lines 64-66 and column 11, lines 8-19) from which to select an advertisement for viewing (column 11, lines 11-18);

prompting the user to select a specified number of advertisements from the menu (prompting the user to select one of the ads from the menu; Fig. 8; column 10, lines 64-66 and column 11, lines 8-19);

receiving a selection of advertisements from the television viewer (column 11, lines 19-30 and lines 38-42); and

presenting the television viewer with the selected advertisement (presenting the viewer with supplemental menus, information, links or video related to the advertisement; column 11, lines 44-65), he fails to specifically disclose prompting viewer selection from the menu within a specified time period and receiving a selection with the specified time period.

In an analogous art, Zigmond discloses an advertisement insertion system (Fig. 5) wherein a menu of advertisements is presented to a user (column 16, lines 65-column 17, line 9) and wherein a default advertisement will be selected for the user

(column 17, lines 3-6) if the user fails to make a selection after some amount of time (inherently including a timer to initiate a default selection when no user selection is made; column 17, lines 3-6) for the typical benefit of ensuring that an advertisement is still presented to the user even when the user fails to actively select an ad (column 17, lines 4-6).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Hook's system to include starting a timer upon presenting the menu, instructing the user to select an advertisement prior to expiration of the timer, determining if the user has selected the advertisement prior to expiration of the timer and if the user has not selected the advertisement prior to expiration of the timer, then selecting on behalf of the user a number of advertisements adequate to total the specified number when added to the advertisements selected by the user, as taught by Zigmond, for the typical benefit of ensuring that an advertisement is still presented to the user even when the user fails to actively select an ad.

As to claim 87, Hooks and Zigmond further disclose:

presenting the television viewer with a menu of advertisement types (such as a the display of info related to a product and linking to the website advertising the product; see Hooks at Fig. 9; column 11, lines 53-65);

receiving an advertisement type selection from the television viewer (see Hooks at column 11, lines 66-67 and column 12, lines 1-9 and lines 50-58); and

presenting the television viewer with the selected advertisement (information concerning the advertisement the viewer is interested in; see Hooks at column 11, lines 63-65 and lines 66-67 and column 12, lines 1-9 and lines 50-58) according to the selected advertisement type (according to the format desired, such as a more info window versus linking to a website; see Hooks at column 11, lines 66-67 and column 12, lines 1-9 and lines 50-58).

As to claim 89, while Hooks and Zigmond disclose presenting the advertisement to viewers when it is selected based upon the selected advertisement type, they fail to specifically disclose charging an advertiser based upon a number of times the advertisement is selected by a group of television viewers and based upon the selected advertisement type presented.

The examiner takes official notice that it is notoriously well known in the art to charge an advertiser based upon the number of times the advertisement is selected by viewers and based upon the selected advertisement type presented, such as for example, if a viewer selects a link to access an advertised website, it is well known for the advertiser to pay a set fee for each viewer who selected the link and was then routed to their website, for the typical benefit of encouraging the service provider to inform viewers of the website and allowing viewers to access it.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Hooks' system to include charging an advertiser based upon a number of times the advertisement is selected by a group of television viewers

and based upon the selected advertisement type presented for the typical benefit of encouraging the service provider to inform viewers of the website and allowing viewers to access it.

7. Claims 3, 4, 7, 11-14, 19, 20, 23, 27-30, 36, 39-41, 43 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barton and Zigmond as applied to claims 1, 18 and 33 above, and further in view of Ngo.

As to claims 3, 19 and 39, while Barton and Zigmond disclose presenting a menu of advertisements to a user for selection, they fail to specifically disclose a menu of advertisement types.

In an analogous art, Ngo discloses a television system (Fig. 3) wherein a set top box (38) will present a menu to a user (column 6, lines 44-54) for a user to select a particular type of advertisement (selecting a particular variant of a single commercial, such as car type or color; column 5, lines 25-39) for the typical benefit of allowing a user to select the particular type of an advertisement which most suits them (column 5, lines 25-39 and column 3, lines 40-42).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Barton and Zigmond's system to include a menu of advertisement types, as taught by Ngo, for the typical benefit of allowing a user to further customize their advertisement viewing through the selection of the type advertisement which most suits them.

As to claims 4, 20 and 40, Barton, Zigmond and Ngo disclose wherein the advertisement types include a conventional commercial segment (advertisement provided during a break in television programming; see Ngo at Figs. 1 and 2; column 3, lines 25-34).

As to claim 41, Barton, Zigmond and Ngo disclose wherein merging the advertisement with the stored entertainment content comprises inserting the advertisements at locations of advertisement place holders forming a part of the entertainment content (wherein the ads are inserted at set breaks within the programming; see Ngo at column 3, lines 25-34).

As to claims 7, 23, 36 and 43, while Barton and Zigmond disclose wherein the selected advertisements are received via a modem (see Barton at paragraph 49), they fail to specifically disclose receiving the advertisements through a television channel.

In an analogous art, Ngo discloses a system (Fig. 3) for inserting user selected advertisements into programming (column 3, lines 25-42) wherein the advertisements are received through a tuner (analog tuner, 48) via a television channel (advertisements contained within a stream with the television programs; Fig. 2, Fig. 5 and column 4, lines 30-58) for the typical benefit of eliminating the need for a separate transmission path by providing the advertisements in a television channel with the television programming (column 4, lines 30-54).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Barton and Zigmond's system to include receiving the advertisement through a television channel, as taught by Ngo, for the typical benefit of enabling the viewer to receive advertisements with the television programming instead of through a separate transmission path.

As to claims 11 and 27, while Barton, Zigmond and Ngo disclose a menu of advertisement types (see Ngo at Fig. 9), they fail to specifically disclose a scrolling banner appearing simultaneously with entertainment content.

The examiner takes official notice that it is notoriously well known to utilize a scrolling banner which appears simultaneously with entertainment content, wherein the banner will scroll to provide more information then could be displayed at once in the banner, for the typical benefit of providing a more efficient use of the display area by utilizing a smaller portion of the display to provide additional information to a user.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Barton, Zigmond and Ngo's system to include a scrolling banner appearing simultaneously with entertainment content for the typical benefit of more efficiently utilizing a display by providing a means utilize a smaller portion of the display area to provide additional information to a user.

As to claims 12 and 28, Barton, Zigmond and Ngo disclose wherein the menu of advertisement types (the advertisement type menu) is presented without simultaneous entertainment content (see Ngo at Fig. 9).

As to claims 13 and 29, Barton, Zigmond and Ngo disclose wherein the menu of advertisement types (see Ngo at Fig. 9) is presented within a window simultaneously with entertainment content (wherein menus are overlaid onto the broadcast image; see Barton at paragraph 39).

As to claims 14, 30 and 50, Barton, Zigmond and Ngo disclose wherein the advertisements and the advertisement types are presented to the user in a single menu (wherein an advertisement and variants created by the set top are presented to the user; see Ngo at column 6, lines 44-54 and column 5, lines 25-39).

8. Claims 17 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barton and Zigmond as applied to claims 1 and 33 above, and further in view of Reichardt et al. (Reichardt) (US2002/0124255A1) (of record).

As to claims 17 and 51, while Barton and Zigmond disclose presenting the menu, they fail to disclose wherein presenting the menu takes place as a result of receipt of a signal from the user requesting the presentation of the menu.

In an analogous art, Reichardt discloses a system (Fig. 3) which will display a menu of multiple advertisements for a user to select (Fig. 5; paragraphs 79 and 80)

upon receipt of a signal from a user requesting the menu (user pressing menu button on remote control; paragraph 79) for the typical benefit of providing the viewer with more control over when the menu is to be displayed.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Barton and Zigmond's system to include wherein presenting the menu takes place as a result of receipt of a signal from the user requesting the presentation of the menu, as taught by Reichardt, for the typical benefit of providing the viewer with more control over when the menu is to be displayed.

Response to Arguments

9. Applicant's arguments with respect to claims 1-51 and 86-89, concerning the use of a timer, have been considered but are moot in view of the new ground(s) of rejection.

10. Applicant's further arguments filed 12/17/04, in regards to claims 86-89, have been fully considered but they are not persuasive.

On pages 18-19 of applicant's response, applicant argues that selecting from a menu, as disclosed by Hooks, is clearly different then selecting an advertisement for display from a menu.

In response, it is noted that Hooks discloses wherein a user is presented with a menu of advertisements (Fig. 8; column 10, lines 64-66 and column 11, lines 8-19) and upon selecting a particular advertisement, a video segment regarding the advertised product may be displayed (column 11, lines 44-65). The display of a video presenting

product information in response to an ad selection from the menu, as taught by Hooks, more then meets the claim limitations.

11. The OFFICIAL NOTICE presented in the prior action stating that it is notoriously well known in the art to utilize a scrolling banner which appears simultaneously with entertainment content was not traversed and is accordingly taken as an admission of the fact noted.

12. The OFFICIAL NOTICE presented in the prior action stating that it is notoriously well known in the art to charge an advertiser based upon the number of times the advertisement is selected by viewers and based upon the selected advertisement type presented was not traversed and is accordingly taken as an admission of the fact noted.

13. The OFFICIAL NOTICE presented in the prior action stating that it is notoriously well known in the art to charge an advertiser based upon the number of times the advertisement is presented to viewers was not traversed and is accordingly taken as an admission of the fact noted.

14. The OFFICIAL NOTICE presented in the prior action stating that it is notoriously well known in the art for advertisements to be of different durations, with some advertisements displayed for lesser periods of time then others, was not traversed and is accordingly taken as an admission of the fact noted.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sheleheda whose telephone number is (571) 272-7357. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

James Sheleheda
Patent Examiner
Art Unit 2614

JS

JOHN MILLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600